

Exhibit 45

REBECCA E. BIRON
ANDERSON vs TRUSTEES OF DARTMOUTH COLLEGE

February 27, 2020

1

UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

CASE 1:19-CV-00109-JD

* * * * *
MARK ANDERSON
VS.
TRUSTEES OF DARTMOUTH COLLEGE
* * * * *

DEPOSITION OF REBECCA BIRON

Deposition taken at the Hanover Inn,
2 East Wheelock Street, Hanover, New Hampshire,
on Thursday, February 27, 2020, commencing at
12:02 p.m.

Court Reporter:

Dawn L. Griffin-Smith, LCR
New Hampshire LCR No. 108 (RSA 310-A:161-181)

APPEARANCES

Representing the Plaintiff:

Mark Anderson - pro se (via telephone)
9007 W. Shorewood Drive, #542
Mercer Island, WA 98040
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Representing the Defendants:

DINSE
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By: Kendall Hoechst, Esq.
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and

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95 Market Street
Manchester, NH 03101
By: Chris McGown, Esq. (via telephone)
(603) 669-4140

Also Present: Dana Scaduto

REBECCA E. BIRON
ANDERSON vs TRUSTEES OF DARTMOUTH COLLEGE

February 27, 2020

3

I N D E X

WITNESS:

REBECCA BIRON

EXAMINATION:

Page

By Ms. Hoechst 4

By Mr. Anderson 23

EXHIBITS FOR IDENTIFICATION:

Number

Page

***None offered.

REBECCA E. BIRON
ANDERSON vs TRUSTEES OF DARTMOUTH COLLEGE

February 27, 2020

5

1 Q. When did you first start working at Dartmouth?

2 A. 2006.

3 Q. What is your current title?

4 A. My current title is professor of Spanish and
5 comparative literature, and director of the local
6 center for the humanities.

7 Q. How long have you been in that position?

8 A. Since July 2019. But I have been a professor since
9 I have been here.

10 Q. Did you have a role before July 2019 that was
11 different than your current position?

12 A. Yes, from 2015 to 2018 I was dean of the college.

13 Q. And what are the responsibilities generally
14 speaking of the dean of the college?

15 A. The dean of the college is senior officer
16 responsible for undergraduate academic experience.
17 The dean of the college also oversees the entire
18 division of student affairs.

19 Q. What does supervision of student affairs entail?

20 A. There are six divisional areas in student affairs.
21 So academic, advising and support, health services,
22 community stands -- which is where judicial affairs
23 is located -- student life, residential education

REBECCA E. BIRON
ANDERSON vs TRUSTEES OF DARTMOUTH COLLEGE

February 27, 2020

8

1 MR. ANDERSON: I can hear you now, but in
2 that last response it was kind of a little.

3 MS. HOECHST: Okay. I'm going to ask the
4 court reporter to read back the answer and we'll
5 move on from there okay?

6 MR. ANDERSON: Okay. Thank you.

7 (Record read.)

8 Q. After, so in a typical appeal, after you received
9 the packet of materials and the USB drive
10 containing the audio recording of the hearing, what
11 would happen next?

12 A. I would read the appeal letter, then I would read
13 the entire content of the notebook from judicial
14 affairs, and I would listen to the audio recording.
15 And then I would determine whether there were
16 procedural errors or new information.

17 Q. Is the scope of your review limited to those two
18 categories you testified about, procedural errors
19 and new information?

20 A. Yes.

21 Q. What are the options you have as the review officer
22 after you make your determination or what
23 determination could you make, what are the options

1 you have?

2 A. So if there, if I found that there were procedural
3 errors that had materially affected the outcome of
4 the committee on standards findings, I could,
5 depending on what those were, I could overturn the
6 conclusion of the committee on standards, I could
7 adjust the conclusions. In terms of sanctions, I
8 could overturn the sanctions or change the
9 sanctions or adjust the sanctions or ask for a
10 reworking of some part of the process.

11 Q. And could that reworking include ordering a new
12 hearing take place?

13 A. Yes.

14 Q. How did you decide which of those potential options
15 in general might be appropriate in any given case?
16 Was there a particular process or procedure you
17 followed?

18 A. There's no formal model because every case is so
19 different, so that decision would always be made
20 based on the particular appeal and the particular
21 information about procedural errors or new
22 information.

23 Q. Is there any, after you in a general case in your

1 Q. What did you decide?

2 A. I decided that there were no procedural errors and
3 there was no new information. So this was an
4 unusual appeal because in Mr. Anderson's appeal
5 letter he raised the issue that the dates listed in
6 the allegation letter to him were limited to his
7 violation of the restraining order, and the hearing
8 and all of the case information was considering all
9 of the events from the February problematic
10 communication through that moment of the violation
11 of the restraining order.

12 And his argument was that the dates on
13 the allegation letter did not correspond to the
14 dates of all of the events considered by the
15 hearing. And his letter asserted that had the date
16 on the allegation letter included from February
17 through, I don't remember the last date, May, he
18 would have responded differently on the allegation
19 response form and in the hearing.

20 Given that he was claiming that he would
21 have responded differently, I found that the issue
22 of his ability to respond to the allegations does
23 potentially have material affect on the outcome of

1 the hearing; and therefore, a hearing in which the
2 allegation letter would more clearly state that the
3 hearing was going to cover events from the first
4 communications all the way through would allow him
5 to respond in a more wholesome way as he indicated
6 in the appeal letter he would like to.

7 Q. Did you consult with anyone else before you made
8 your decision?

9 A. I did.

10 Q. Who?

11 A. Kevin O'Leary.

12 Q. Without getting into any of the specifics of what
13 you discussed with Attorney O'Leary, what did you
14 do after you consulted with him?

15 A. After I consulted with him I drafted the response
16 letter to Mr. Anderson's appeal request.

17 Q. I am showing you what has been previously marked
18 for identification purposes as Exhibit 13. Would
19 you please take a look at that document and let me
20 know when you've finished reviewing it.

21 MR. ANDERSON: I'm sorry. When she's
22 looking at that, I don't have an index of what the
23 exhibits are, so could you maybe give me a brief

REBECCA E. BIRON
ANDERSON vs TRUSTEES OF DARTMOUTH COLLEGE

February 27, 2020

21

1 A. No.

2 Q. Did you talk with Provost Kotz about any aspect of
3 the first hearing or first appeal?

4 A. Not that I recall.

5 Q. Did you have any communication with Provost Kotz
6 before he began his review as the hearing officer
7 in the second appeal?

8 A. I remember a brief conversation about the role of
9 appeals officers, stating with him -- because he
10 had never served as an appeal officer -- stating
11 that the role of the appeal officer was to
12 determine if there was materially relevant
13 procedural errors or new information.

14 Q. Other than the testimony you just gave about the
15 parameters of the scope of his review were, did you
16 give him any other details or information regarding
17 Mr. Anderson's disciplinary case or any other
18 topic?

19 A. No.

20 Q. Did you ever express to Provost Kotz in writing or
21 in person or over the phone any view of yours as to
22 what his decision should be in the second appeal?

23 A. No. I didn't have any information about the second

REBECCA E. BIRON
ANDERSON vs TRUSTEES OF DARTMOUTH COLLEGE

February 27, 2020
22

1 case, the second hearing.

2 Q. Before you issued your outcome letter reflected in
3 Exhibit 13, did you ever meet with Mr. Anderson in
4 person?

5 A. No.

6 Q. Focusing on that same time period, did you ever
7 speak to Mr. Anderson on the phone?

8 A. No.

9 Q. Now, focusing on the time period after you
10 transmitted Exhibit 13 to Mr. Anderson, did you
11 ever meet him in person?

12 A. No.

13 Q. Did you ever speak to him on the phone?

14 A. Not that I recall.

15 Q. Okay.

16 MS. HOECHST: Off the record for a
17 second.

18 (Discussion held off the record.)

19 MS. HOECHST: Back on the record. So
20 while we were off the record, Mr. Anderson asked me
21 to locate a letter dated May 10, 2017, to him,
22 which I believe is Exhibit 4, which I'm now going
23 to hand to Ms. Biron.